

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

IN RE PHARMACEUTICAL INDUSTRY  
AVERAGE WHOLESALE PRICE  
LITIGATION

THIS DOCUMENT RELATES TO ALL  
CLASS ACTIONS  
01-CV-12257-PBS AND 01-CV-339

)  
) MDL No. 1456  
)

) CIVIL ACTION: 01-CV-12257-PBS  
)

) Judge Patti B. Saris  
)

) Chief Magistrate Judge Marianne B. Bowler  
)

**PLAINTIFFS' MOTION FOR CLASS CERTIFICATION**

1. Pursuant to Fed. R. Civ. P. 23(a) and (b)(3), Plaintiffs move for an order certifying the following classes:

**Medicare Part B Co-Pay Class.**

All persons or entities who made a co-payment for a Medicare Part B covered AWPID manufactured by AstraZeneca, the BMS Group, the Johnson & Johnson Group, the GSK Group or the Schering Plough Group. Excluded from the Class are those who made flat co-pays and those whose co-pays were reimbursed by an insurer or other third party.

**Third-Party and Co-Payor Class.**

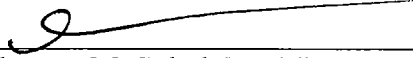
Third Party Payors who made reimbursements for any AWPID manufactured by AstraZeneca, the BMS Group, the Johnson & Johnson Group, the GSK Group or the Schering Plough Group based on contracts that expressly use AWP as a pricing standard. Included within the Class are individual payors who paid coinsurance (*i.e.*, co-pays proportional to the reimbursed amount) for an AWPID that was based upon use of AWP as a pricing standard.

**RICO Subclass.**

Third-Party Payors who made reimbursements for any AWPID manufactured by AstraZeneca, the BMS Group, the Johnson & Johnson Group, the GSK Group, or the Schering Plough Group under contracts with any of the following PBMs, Caremark, AdvancePCS, Express Scripts and Medco (or their predecessors), where the contracts with the PBMs expressly use AWP as a pricing standard.

2. The proposed Class Period is January 1991 to the present.
3. Excluded from these classes are the defendants herein; any subsidiaries or affiliates of defendants; the officers and directors of defendants during the Class Period; members of the Individual Defendants' immediate families; any person, firm, trust, corporation, officer, director or any individual or entity in which any defendant has a controlling interest or which is related to, or affiliated with, any of the defendants; and the legal representatives, agents, affiliates, heirs, successors-in-interest or assigns of any such excluded party and governmental entities.
4. Plaintiffs seek certification of the RICO Subclass under Count II of the AMCC (Violation of the Racketeering Influenced and Corrupt Organizations Act, 18 U.S.C. § 1964 ["RICO"]), and under Count IX (The Law of Civil Conspiracy).
5. Plaintiffs seek certification of the Medicare Part B Co-Pay, Third-Party and Co-Payor Class under Count IV of the AMCC (Violation of State Consumer Protection Laws).

DATED: September 3, 2004

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**CERTIFICATE OF SERVICE**

I hereby certify that I, Steve W. Berman, an attorney, caused a true and correct copy of the foregoing **PLAINTIFFS' MOTION FOR CLASS CERTIFICATION** to be delivered to all counsel of record by electronic service pursuant to Paragraph 11 of the Case Management Order No. 2, by sending on September 3, 2004, a copy to Verilaw Technologies for Posting and notification to all parties

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